IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

CRL.A.No. 892 of 2004(C)

SC.519/2003 of THE ADDL.SESSIONS COURT, FTC – II.
CP.50/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA
.....

APPELLANT:

MOHANDAS, S/O. PODIYAN,
C.8361, C.P., TRIVANDRUM-12.

BY ADV. SRI.K.M.JAMALUDEEN.(STATE BRIEF)

RESPONDENT:

STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

Crl. Appeal No.892 of 2004 C

Dated this the 18th day of January, 2007

Judgment

BALACHANDRAN,J.

The appellant is the accused in Sessions Case No.519 of 2003 on the file of the Additional Sessions Court, Pathanamthitta. He was convicted for offence under section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. The prosecution case is that the appellant was suspicious of the chastity of his wife Prasanna and he used to manhandle her on several days and at 5.30 p.m. on 21.1.2003, with the intention of causing her death, while Prasanna was wearing dress in the front room of their residential house bearing door No.XII/625 of Aranmula Panchayat in Kottamuri in Kidanganoor village, the appellant inflicted cut injuries and also beat her with an axe, a dangerous weapon and she fell down sustaining the injuries. Thereupon the appellant dumped clothes and pillows on her body, poured kerosene thereon which had been kept in a can in that room and he set fire thereto making use of the burning spike thread from the

lamp kept lit in the pooja muri. When PW1, son of the accused, came rushing, he pushed him down and closed the door and rendered the body of the now deceased victim getting burnt. Neighbours assembled hearing the alarm raised by PW1. The victim was taken to the Century Hospital, Chengannur and then to Medical College Hospital, Kottayam. While under treatment, she breathed her last at about 12.25 hours in the night of 25.1.2003 and thereby the appellantl committed offence under section 498A and 302 IPC.

3. The evidence adduced by the prosecution to establish the guilt in the accused consists of oral evidence of PWs 1 to 18, documentary evidence Exts.P1 to P15 (a) and material objects identified and marked, MOs 1, 2 and MO 3 series.

4. PW1 is a child witness aged nine years. He is the son of the appellant and the deceased. The Sessions Judge recorded his evidence after ascertaining that he is a child who is capable of giving evidence on oath. He has tendered evidence that before death of his mother, he was residing with his father and mother at Kottamuri where, close to their house, there is also the house of his paternal grandfather where the brothers of

his father are also residing. According to him, there is a pathway and a canal in front of their house. He has stated that their residential house has only two rooms, a living room in front with an adjacent pooja muri and a kitchen in a lean-to. He has stated that his mother died sustaining cut injuries and also burns and that was on the day on which his father returned after pilgrimage to Palani. He deposed that on that day he came back from his school by about 4.30 p.m. and his father and mother were there in the house and his younger brother was also there. His mother was getting ready to go to temple and they were also to be taken to the temple. According to him, himself and his younger brother were playing in the courtyard and his father and mother were within the front room and, on some matter, there occurred a quarrel between his father and mother. He stated that his father, the appellant, uttering that his mother would be done away with, inflicted a cut injury on the back of the head of his mother and thereafter inflicted several blows on her with both sides of the axe and, sustaining the injury, his mother fell down bleeding and raising alarm. Thereupon, his father took out clothes which had been hung in the room as also clothes which were kept in the

almirah and dumped them on the body of his mother and from a jerrican with kerosene which had been kept in the said room, he poured kerosene on the body of his mother and on the clothes dumped on her and he took the burning spike thread from the pooja muri and put it on the body of his mother. According to him, before his father setting fire, he caught hold of his father, but, his father pushed him out to the courtyard and closed the door. Thereupon, he raised alarm calling his paternal grandfather. His grandfather as also others came rushing. They switched on the motor and poured water and put out the fire and took his mother to the hospital. He has identified the axe as also the jerrican of which he has already spoken and those are MOs 1 and 2.

5. Apart from certain minor discrepancies in the testimony of PW1, nothing could be brought out from his testimony so as to render his testimony unreliable for any reason whatsoever. In his testimony in cross-examination, it has come out that very often, there used to be quarrels between his father and mother. To the questions in cross-examination, he has stated that he felt that his father was having mental ailment and, however, his mother has not said that his father is

having any mental disease. From what he has stated in cross-examination, one aspect looms large that he was pushed out and the appellant closed the door and was remaining inside the room while his wife was burning within the room. He has also stated that other than his father and mother, there was nobody else in their house then.

6. PW2 is the father of the appellant himself. He has also stated that the occurrence in the case has happened on the day on which the appellant returned from Palani and that he came rushing to the house of the appellant on hearing the alarm raised by PW1. According to him, he had no proper vision. At the same time, his testimony is that the appellant was within the room, that the now deceased Prasanna, the wife of the appellant, sustained burns, that at his house there were workers as there was construction work going on, that his younger son was also then present, that all of them came rushing and water was pumped to put out fire. He also stated that he came rushing to the house of the appellant not on hearing the alarm raised by the accused. In cross-examination, he stated that the appellant and the deceased were not on good terms, that he also drew water

to put out fire and that, however, after the fire was put out, he did not enter at all into the house of the appellant and did not see the deceased at all.

7. PW3 is the younger brother of the appellant. He has also stated that the occurrence in the case has taken place at about 5.30 p.m. and that was the day on which the appellant returned from Palani. He also came rushing to the house of the appellant on hearing the alarm raised by PW1. He has seen the deceased ablaze and he also stated that when he entered the room, the appellant was present in that room. In cross-examination, it was brought out that the deceased was having burns on her entire body, but, she was talking then. It is also stated by him that he was pushing the door open and when he came rushing, the door was remaining closed with the deceased and the appellant alone within that room. Evidence of PWs 2 and 3 are sufficient to take the view that at the time when the deceased was ablaze herself and the appellant alone were in the room and the appellant was remaining without doing anything to see that the fire is put out.

8. PWs 4 and 5 are labourers who were attending to work in the adjacent house occupied by the father of

the appellant. Both of them have given evidence that while they were doing work in the house of the father of the appellant, they heard an alarm from the house of the appellant raised by children, that on their reaching the house of the appellant smoke was emanating from within the room, that the door was closed and the appellant was within the house and that the door of the house was being pushed open by those who assembled there. They also have stated that the wife of the appellant was then raising alarm in a feeble voice and she was ablaze then and that there was smell of kerosene as well. It has also been stated by them that they poured water to put out the fire and took out burnt body of the deceased and that then within the room there was blood and that the accused was then standing within the room and he did not render any assistance to put out the fire. According to PW5, it was he himself who took the wife of the appellant to Century Hospital taking her in a car. He stated that while being taken to the hospital, the wife of the appellant was conscious and was talking and also asked for water. According to PW5, he asked the wife of the appellant as to what happened and showing the injury on the head she stated that cut was inflicted by her husband using an

axe. In cross-examination also, he has asserted that the appellant/accused was standing within the room and not outside and that they could see him only when the door was pushed open. Thus, the evidence of PWs 1 to 5 clearly establishes that the deceased was ablaze within the house of the appellant which consisted of only one main room and the appellant was also standing within the said room without making any effort at putting out the fire despite alarm raised by the deceased.

9. The postmortem certificate Ext.P6 issed by PW16 who conducted autopsy on the body of the deceased shows the following injuries on the body of the deceased:

> "1. Infected superficial burns involving the whole body except upper 1/3rd of front and back of chest, pubic area and outer side of the whole length of right upper limb and head and neck.
>
> 2. Sutured wound 14 c.m. anterioposteriorly placed on the top of head 2 c.m. right of midline and 9 c.m. above right eyebrow.
>
> 3. Irregular sutured wound 10.5 c.m. over an area 7 x 2.5 c.m. on the right side of back of head 6 c.m. behind right ear. All other above injuries were partially healed.

> 4. Brain showed thin film of subdural haemorrhage on the right cerebral hemispheres and contusion on the under surface of both temporal lobes."

The opinion as to the cause of death given by PW16 in Ext.P6 postmortem certificate is that the deceased died due to burns (70%) on the body and head injury. Nothing has been brought out in cross-examination of PW16 to assail his information as regards the cause of death. Ext.P2 is the wound certificate recorded at the Century Hospital, Mulakuzha by PW12 at 6.15 p.m. on 21.1.2003 when the deceased Prasanna was brought over to that hospital with injuries. Col. No. 9 thereof shows that the cause of injury was stated to the doctor by the husband of the injured, namely, the appellant, as being on account of accidental fire and as against Col. No. 10, PW12 has recorded that the cause of injury, according to the patient, was assault. The details of the injuries noted in Ext.P6 are the following:

> "Burns 70-75% (superficial to deep) both lower limbs front of chest and abdomen both forearm, part of face. Lacerated wound on the scalp near vertex."

Thus, the evidence adduced by the prosecution has established beyond all reasonable doubts that the death of the deceased is caused on account of the head injury and burns sustained on her body which is 70% as certified by PW16 and that the appellant and no other has set fire on the body of the deceased pouring kerosene on her body dumping also pillows and clothes on her body while she fell down sustaining cut injury on her head which also was inflicted by the appellant himself. The ocular evidence is consistent with Ext.P3 F.I. statement given by the deceased herself at 3.30 p.m. on 22.1.2003 which is admissible as dying declaration. The mention of the weapon as chopper in Ext.P3 is subsequently corrected also by the deceased in subsequent questioning. The evidence of PW5 further shows that the deceased was conscious and could talk while she was being taken to hospital and that to him, the deceased has stated that the weapon used to inflict cut on her was axe. This aspect is not challenged in cross-examination at all. There is no explanation at all for the accused as to how the cut injury is caused on the head of his wife, the deceased, when he was the only one by her side within the only room in the house when his children were playing

outside in the courtyard. The evidence of PW1 corroborated by the testimony of PWs 2 to 5 established beyond all reasonable doubts that the cut injury was inflicted by the appellant and he himself was setting her ablaze when she fell down sustaining the injury. Apart from certain minor discrepancies in evidence of certain witnesses which is not of any serious consequence, nothing else could be pointed out by the learned counsel for the appellant to cast any suspicion in the prosecution case. The discrepancies and contradictions pointed out are so minor and trivial as to have any effect on the copious, convincing and reliable evidence which has established the guilt of the appellant. The court below has rightly found the appellant guilty of the offence punishable under section 302 of the Indian Penal Code. The sentence awarded also is the lesser out of the alternative punishments that can be awarded.

In the circumstances, there is absolutely no reason to interfere either in the conviction or in the sentence awarded to the appellant by the court below. We

confirm both the conviction and sentence against the appellant and dismiss this appeal.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

CRL.APPEAL No.892/2004

Judgment

Dated:18th January, 2007